

U.S.S.N. 10/666,170

6

CDG 0101 PA

REMARKS

In the Office Action dated December 22, 2004, claims 1-14 are pending in the above application. Claims 15, 24, and 28 are now independent claims from which all other remaining and newly presented claims depend therefrom. Claims 1-5, 7, 10, and 12-14 are canceled. Claims 6, 8-9 and 11 are herein amended. Claims 15-30 are newly added.

Claim 10 stands objected to for informality reasons. Note that claim 10 is herein canceled.

Claims 11 and 13 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Office action states that there is not antecedent basis for "said picture pockets". Applicants submit that claim 11 is herein amended to no longer require such antecedent basis and claim 13 is herein canceled.

Claims 1, 3, 6-7, and 9 stand rejected under 35 U.S.C. 102(b) as being anticipated by Polzin (U.S. Pat. No. 5,025,581).

Note that claims 1, 3, and 7 are herein canceled and that claims 6 and 9 depend now from claim 15.

Claim 15 recites a display device for exhibiting one or more objects. The display device includes a wallpaper substrate that has a rear surface and a front surface. A first adhesive layer is coupled to the rear surface and is configured for attachment to a structural surface of a building. A pocket, which has a transparent front layer and one or more openings, displays the objects. The pocket is coupled to the wallpaper substrate via a second adhesive layer.

Applicants submit that Polzin fails to teach or suggest any of the limitations recited in claim 15. The Office Action states that Polzin shows a flat substrate 3. Regardless of whether this is true, Polzin fails to teach or suggest a wallpaper substrate. Item 3 of Polzin is a bottom layer of a display holder. Item 3 of Polzin is not wallpaper nor is it even similar to wallpaper. The term "wallpaper", generally, refers to a wall covering used to decorate the interior

U.S.S.N. 10/666,170

7

CDG 0101 PA

walls of homes, offices, and other buildings. See *Webster's Third New International Dictionary* and elsewhere for the plain and ordinary meanings of the term "wallpaper." Wallpaper is typically sold in rolls and is adhered to a wall. This is clearly not the case with the display holder of Polzin.

Also, Applicants further submit that Polzin fails to teach or suggest a pocket that is adhered to a wallpaper substrate. Although Polzin discloses a middle layer 2 that is transparent and that may be used to cover a picture, the middle layer is not attached to a wallpaper substrate, but rather to a bottom layer of a picture holder.

Since Polzin fails to teach or suggest a wallpaper substrate and a pocket attached to a wallpaper substrate, Polzin also fails to teach or suggest the adhesive layers attached thereto. In order for a reference to anticipate a claim the reference must teach or suggest each and every element of that claim, see MPEP 2131 and *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628. Therefore, since Polzin fails to teach or suggest each and every limitation of claim 15, it is novel, nonobvious, and is in a condition for allowance at least in view of Polzin. Also, since claims 6 and 9 depend from claim 15, they too are novel, nonobvious, and are in a condition for allowance for at least the same reasons.

Claims 1-2, 6, 9-11, and 14 stand rejected under 25 U.S.C. 102(e) as being anticipated by Brown (U.S. Pat. No. 6,694,650).

Again, claim 1-2, 10, and 14 are herein canceled. Claims 6, 9, and 11 now depend from claim 15.

Applicants submit that Brown, like Polzin, also fails to teach or suggest any of the limitations recited in claim 15. The Office Action states that Brown discloses a generally flat substrate 3. Although Brown discloses a backer panel 3, the backer panel 3 is not a wallpaper substrate. Also, although Brown discloses a pocket panel 2 that is attached to the backer panel 3, the pocket panel 2 is not coupled to a wallpaper substrate. Brown is directed to a backer panel that may be hung on a surface. Brown is not directed to a wallpaper substrate that includes one or more pockets for object or picture display, as claimed. Since

U.S.S.N. 10/666,170

8

CDG 0101 PA

Brown fails to teach or suggest a wallpaper substrate and a pocket attached to a wallpaper substrate, Brown also fails to teach or suggest the adhesive layers attached thereto.

Thus, claim 15 is also, novel, nonobvious, and is in a condition for allowance at least in view of Brown. Since claims 6, 9, and 11 depend from claim 15, they too are novel, nonobvious, and are in a condition for allowance for at least the same reasons.

Claim 4 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Polzin in view of Mostert (U.S. Pat. No. 5,452,479).

Note that claim 4 is herein canceled. However, note that new claim 30, which is dependent upon claim 28, contains similar limitations as that recited in original claim 4.

Claim 28 recites a method of manufacturing a wall covering. The method includes forming a wallpaper substrate, applying a first adhesive layer to a rear side of the wallpaper substrate, and integrally forming a pocket on a front surface of the wallpaper substrate for insertion therein of at least one object. Note that none of the relied upon references recite a method of manufacturing or forming a wall covering requiring the limitations claimed. Polzin and Mostert do not even disclose a wallpaper substrate.

Referring to MPEP 706.02(j) and 2143, to establish a *prima facie* case of obviousness the prior art reference(s) must teach or suggest all the claim limitations, see *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Thus, since Polzin and Mostert alone or in combination fail to teach or suggest each and every element of claim 28, Applicants submit that claim 28 is novel, nonobvious, and is in a condition for allowance.

Applicants submit that since claim 30 depends from allowable claim 28, that it too is novel, nonobvious, and is in a condition for allowance for at least the same reasons.

The Office Action states that Polzin fails to disclose the limitation of melting a front layer directly to the substrate. Applicants agree. However, the Office Action states that Mostert discloses the stated limitation. Although

U.S.S.N. 10/666,170

9

CDG 0101 PA

Mostert discloses a heat seal 36, the heat seal 36 is not formed through the melting of a pocket or via material of the pocket, as claimed, but rather is a coating that is applied to the edges of the panels 30 and 32. Thus, claim 30 is further novel and nonobvious for the stated reason.

Also, Applicants submit that Mostert is nonanalogous art and should not be relied upon as a valid reference. Referring to MPEP 2141.01(a), while the Patent Office classification of references and cross-references in the official search notes are some evidence of "nonanalogy" or "analogy" respectively, the court has found "the similarities and differences in structure and function of the inventions to carry far greater weight." *In re Ellis*, 476 F.2d 1370, 1372, 177USPQ526, 527 (CCPA 1973). Mostert would not have logically commended itself to an inventor's attention in considering the problems solved by the method of claim 30. In forming a wall covering, one would clearly not look to a cap with a display pouch. Although Mostert discloses a pouch for displaying a card-like object, Mostert is not directed to a wall covering or a wallpaper substrate having one or more pockets for the displaying of objects, such as pictures. The apparatus of Mostert would not have logically commended itself to the Applicants' attention in solving the problems associated with the displaying of objects on a structural surface of a building. Mostert would not be reasonably pertinent to the particular problems solved by the method of claim 30. Thus, the Applicants submit that Mostert is nonanalogous art and any reliance thereon would be far-reaching at best.

Claims 1-2, 5-6, 8-11, and 14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Polzin in view of Martinez et al. (U.S. Pat. No. 4,900,604).

Note again that claims 1-2, 5, 10, and 14 are herein canceled. Claims 6, 8-9, and 11 now depend from allowable claim 15. Thus, claims 6, 8-9, and 11 are also novel, nonobvious, and are in a condition for allowance for at least the same reasons.

The Office Action states that Martinez discloses a picture display device and refers to the picture frame shown in Figure 2 of Martinez that is attached to

U.S.S.N. 10/666,170

10

CDG 0101 PA

a wallpaper 36. Applicants submit that clearly a picture frame that is hung on a wall over wallpaper is different than a wallpaper substrate that has one or more pockets. The wallpaper 36 and the substrate sheet 12 of Martinez do not have any pockets.

Referring to MPEP 2143.01, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). There is no suggestion or motivation provided in either Polzin or Martinez to make such combination and modifications thereof to arrive at the present invention. Polzin is directed to a display holder. Martinez simply discloses a wallpaper. Obviously wallpaper exists in the art. The mere showing that wallpaper exists in insufficient evidence to show that the claimed invention is obvious. Also, although the display holder of Polzin may be attached to a surface, many different items can be attached to a surface, including the picture frame of Martinez. There is no motivation provided to combine the references and make the necessary modifications. Therefore any obviousness rejection would be based on improper hindsight reconstruction in view of the present application.

The Office Action also states that Polzin and Martinez fail to disclose placing a plurality of picture holders onto the substrate. Applicants agree and submit that Polzin and Martinez fail to disclose the adhering of multiple pockets to a wallpaper substrate. The Examiner takes Official Notice and states that it is known to place a plurality of picture frames on a wall. Applicants submit that although one may place multiple picture frames on a wall, it is not known to adhere multiple pockets to a wallpaper substrate or to form a wallpaper substrate having multiple pockets.

Applicants further submit that Official Notice is being asserted by the Office Action without the use of documentary evidence to support the Examiner's conclusion. Referring to MPEP 2144.03, Office Notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of

U.S.S.N. 10/666,170

11

CDG 0101 PA

instant and unquestionable demonstration as being well-known. The notice of facts beyond the record, which may be taken by the Examiner, must be "capable of such instant and unquestionable demonstration as to defy dispute." *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970). Applicants submit that the limitations in question are not capable of such instant and unquestionable demonstration as to defy dispute. Specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *Id.* at 1091, 165 USPQ at 420-21. Any facts so noticed should be of notorious character and serve only to "fill in the gaps" in an insubstantial manner. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 (Fed. Cir. 2001). The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amendable to the taking of such notice. *In re Eynde*, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973). Ordinarily, there must be some form of evidence in the record to support an assertion of common knowledge. General conclusions concerning what is "basic knowledge" or "common sense" to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings will not support an obviousness rejection. *Lee*, 277 F.3d at 1344-45, 61 USPQ2d at 1434-35 (Fed. Cir. 2002).

The Examiner must provide specific technical and scientific reasoning to support his or her conclusion of common knowledge. *In re Soli*, 317 F.2d at 946, 37 USPQ at 801 (CCPA 1963). Applicants submit that no specific factual findings or concrete evidence has been put forth nor has any specific technical reasoning been put forth to support the Official Notice taken. To simply state that the idea of placing picture frames onto a wall, to show that the adhering of multiple pockets to a substrate is known in the art, without support for the stated limitations and without evidence that such disclosure is adequate to show the claimed limitations are known is irrelevant and is not a proper or valid

U.S.S.N. 10/666,170

12

CDG 0101 PA

argument that can be used against the Applicants. The Official Notice taken does not even contain the same elements as the limitations claimed. Also, if Applicants challenge a factual assertion as not properly officially noticed or not properly based upon common knowledge, the Examiner must support the finding with adequate evidence. See 37 CFR 1.104(c)(2). Again Applicants submit that no such evidence has been provided to support a teaching or suggestion of the claimed elements.

Thus, claim 15 is also novel, nonobvious, and is in a condition for allowance. Since claims 6, 8-9, and 11 depend from claim 15, they are also novel, nonobvious, and are in a condition for allowance.

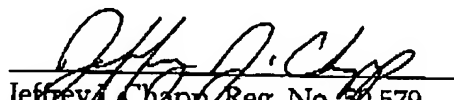
Claims 7, 12, and 13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Polzin in view of Martinez as applied to claim 1 and further in view of DeProspero et al. (U.S. Pat. No. 5,639,539).

Note that claims 7, 12, and 13 are herein canceled.

In light of the amendments and remarks, Applicants submit that all of the objections and rejections are now overcome. The Applicants have added no new matter to the application by these amendments. The application is now in condition for allowance and expeditious notice thereof is earnestly solicited. Should the Examiner have any questions or comments, the Examiner is respectfully requested to contact the undersigned attorney.

Respectfully submitted,

ARTZ & ARTZ P.C.


Jeffrey A. Chapp, Reg. No. 50,579
28333 Telegraph Road, Suite 250
Southfield, MI 48034
(248) 223-9500

Dated: June 22, 2005